

## **AGREEMENT FOR PAYMENTS IN LIEU OF TAXES**

THIS AGREEMENT is made and entered into by and between C.E. Ware Towers, Inc., a Tennessee not-for-profit corporation ("Ware Towers), and The Health, Educational and Housing Facility Board of the City of Memphis, Tennessee (the "HEB"), as representative for and on behalf of the City of Memphis, Tennessee (the "City") effective as of the 1<sup>st</sup> day of October, 2008, for payments by Ware Towers allowing for the recoupment of the cost to the City of providing improvements, facilities and services to Ware Towers in-lieu-of real property tax, said Agreement effective upon tax exemption by the State of Tennessee (the "State"). This Agreement is void unless and until said exemption is granted by the State.

**WHEREAS**, Ware Towers is the owner of certain real property particularly described on Exhibit "A" hereto, which property is located at 3571 South Third Street, Memphis, Shelby County, Tennessee and is identified in the office of the City Treasurer under Tax Parcel Number 075-074-00075 (the "Property"); and

**WHEREAS**, the Property is improved as a 56 one bedroom unit apartment building for elderly and handicapped persons, and has been built under Section 202 of the National Affordable Housing Act, and is located on the Property described in Exhibit "A"; and

**WHEREAS**, the Property is encumbered by a Deed of Trust recorded as Instrument No. 04163691 and is subject to a Capital Advance Program Regulatory Agreement recorded as Instrument No. 04163693 (the "HUD Documents"), all in the County Register's Office, and the HUD Documents require that the Property must be operated as rental housing for very low income elderly or disabled persons for a period of forty (40) years, ending as of October 1, 2045, pursuant to the Deed of Trust with "HUD" and Section 202 of the National Housing Act of 1959 (12 U.S.C. Section 1701q); and

**WHEREAS**, T.C.A. Section 67-5-207 states that property of Tennessee not-for-profit corporations built under Section 202 of the National Housing Act of 1959 and used for housing for low income elderly or handicapped persons may be exempted from real property taxes, as long as such property complies with the provisions of said Section and State of Tennessee Board of Equalization ("SBOE") Rules; and

**WHEREAS**, T.C.A. Section 67-5-207(a)(2) provides for recoupment of the costs of providing essential services by local governments in lieu of real property taxes being made on property granted an exemption under this Section by the ("SBOE"), and the amounts shall not exceed the estimated costs incurred by municipalities or counties to provide improvements, facilities and/or services to the exempt property; and

**WHEREAS**, Ware Towers has applied to the SBOE for an exemption from real property taxes for the Property and said exemption is conditioned upon certain conditions, including the filing of an agreement with the SBOE for payment in lieu of real property taxes to the City, being previously met; and

**WHEREAS**, the HEB agrees that Ware Towers complies with the conditions and intent of the statute, and that the Property and its intended use complies with the provisions of T.C.A. Section 67-5-207; and

**WHEREAS**, Ware Towers and the HEB, as representative of and on behalf of the City, enter this Agreement requiring Ware Towers to reimburse the City for improvements, facilities and services provided to the Property in accordance with T.C.A. Section 67-5-207(a)(2); and

**WHEREAS**, by resolution adopted and approved on December 4, 2007, the City Council of the City delegated its authority to enter similar agreements, pursuant to T.C.A. Section 67-5-207, et seq. to The Health, Educational and Housing Facility Board of the City of Memphis with said delegation conditioned upon the exemption applicant paying twenty-five (25%) of the ad valorem taxes that would have been due. The City approved an agreement with Ware Towers by resolution of its HEB on October 1, 2008.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS SET OUT HEREIN**, the receipt and sufficiency of such being hereby acknowledged, the parties agree as follows:

1. Beginning with the effective date of the real property exemption for the Property granted by the SBOE, Ware Towers shall pay to the City Treasurer for each calendar year (and pro rata for any part of a calendar year for which the tax exemption is in effect) the total sum of an amount equal to but not to exceed twenty-five (25%) percent, or any lower percentage as may be determined at any time by the City Council of the City, the State Board of Equalization or any other applicable law, regulation or ordinance, of the ad valorem taxes otherwise due on the property as of the effective date of this agreement multiplied by the current millage rate of the City to reimburse the City for the costs of providing improvements, facilities and services to the Property. In the event that a tax assessment(s) of the Project as of the date hereof shall change during the term of this Agreement by virtue of a successful appeal to the Shelby County Assessor, or beyond, this Agreement shall be modified and amended to reflect that the tax assessment(s) of the Project upon which the annual PILOT payment is based will be the new finally determined assessment(s) amount.

2. Within thirty (30) days of the granting of the tax exemption by the SBOE, Ware Towers shall pay to the City or make arrangements with the City to pay all outstanding real property taxes on the Property for periods prior to the date of the exemption, if any, unless Tenn. Code Ann. § 67-5-207 exempts or the County Assessor determines the Property is exempt from any such outstanding real property taxes or assessments for any such prior period, in which case Ware Towers shall pay to the City the payment in lieu of taxes for said periods or such other amounts as provided by statute or the County Assessor, as the case may be.

3. Subject to Paragraph 4 below, the payments in lieu of tax required by this Agreement are to be made on or before August 31st each year. Any payments in lieu of tax not made when due shall thereafter bear interest at the highest rate allowable under applicable law.

4. The payments in lieu of tax provided for herein shall continue to be due and

payable in the amounts specified herein until the date on which the Property is no longer eligible for real property tax exemption under T.C.A. Section 67-5-207.

5. The parties to this Agreement acknowledge that the costs to the City to provide improvements, facilities and/or services to the Property may be greater than the amount of recoupment specified herein or as amended or modified pursuant to this Agreement, and that such costs may increase substantially during the time the Property is entitled to exemption from real property taxes. In consideration of the agreement by the City to accept payments in lieu of real property tax in amounts less than such costs, and in order to lessen the burden on the City of providing improvements, facilities and/or services to Ware Towers, Ware Towers agrees that it will cooperate fully with the City to examine and re-negotiate the terms of this agreement every four (4) years from the date of this agreement.

6. The parties agree that the payments in lieu of taxes reimbursing the City for costs provided for herein are entirely separate from, and in addition to, any payments that may be required for garbage fees, sewer fees or other similar fees that may be imposed on all residents of the City in the future.

7. This Agreement shall be governed by, and construed in accordance with, the law of the State of Tennessee, and shall further inure to the benefit of, and shall be enforceable by and against, the parties hereto, their respective successors and assigns.

8. Ware Towers represents and warrants that it is a not-for-profit corporation duly organized and incorporated in the State of Tennessee; that it has received, and at all times during the period of this Agreement, will maintain federal tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and that the Property is and shall remain, at all times relevant during the period of this Agreement, in full compliance with the HUD Documents, Deeds of trusts and other documents regarding the National Housing Act of 1959 and other applicable law affecting eligibility for exemption from real property taxes and compliance with HUD regulations.

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IN WITNESS WHEREOF, Ware Towers and the HEB, as representative and on behalf of the City, have executed this Agreement the day and year first written above to be effective upon and conditioned upon the Tennessee State Board of Equalization granting a tax exemption pursuant to Tenn. Code Ann. Section 67-5-207 for the Property.

**C.E. WARE TOWERS, INC.**

BY: Marilyn Wallace

TITLE: President

ATTEST:

Ashley Searcy  
SECRETARY

**THE HEALTH, EDUCATIONAL AND  
HOUSING FACILITY BOARD OF THE  
CITY OF MEMPHIS, TENNESSEE**

BY: [Signature]

DANIEL T. REID, CHAIR

ATTEST:

[Signature]  
SECRETARY